

REMARKS***Summary of the Amendment***

Upon entry of the above amendment, claims 18 and 37 will have been amended and new claim 38 will have been entered for consideration by the Examiner. Accordingly, claims 18 – 38 currently remain pending.

Summary of the Official Action

In the instant Office Action, the Examiner has rejected claims 18 – 37 over the applied art of record. By the present amendment and remarks, Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Request for Confirmation of Consideration of Previously Cited Items

Applicant respectfully requests that the Examiner confirm consideration of the foreign language documents cited in the August 2, 2007 Information Disclosure Statement, i.e., German Patent Application Nos. 21 21 586; 17 932; and 732 739. While the Examiner refused to confirm consideration of the above-noted documents because a concise explanation of relevance was not provided, Applicants note that each of these documents was cited in the International Search Report.

As the Examiner should be aware, the submission of a foreign Office Action or Search Report satisfies the requirement of a statement of relevance. In particular, the Examiner's attention is directed to the "Response to and Analysis of Comments" section of the PTO's Final Rule on Duty of Disclosure", 57 FR 2021, wherein in response to Comment 68, the U.S. Patent and Trademark Office replied:

Reply: The language of §1.98(a)(3) has been modified so that no concise explanation is required for information submitted in the English language.

The concise explanation requirement for non-English language information may be met by the submission of an English language version of the search report indicating the degree of relevance found by the foreign office. It is not necessary that this detail be included in the rule.

Because Applicants submitted an English language version of the International Search Report upon entering the U.S. National Stage, and referred to this Search Report within the body of the Information Disclosure Statement filed August 2, 2007, the foreign language documents were submitted in a proper manner for consideration by the Examiner, and should have been made of record by the Examiner.

Therefore, Applicants respectfully request that the Examiner once again review the foreign documents, and indicate such consideration on the record.

Traversal of Rejection Under 35 U.S.C. § 102(b)

Applicant traverses the rejection of claims 18 – 20, 32, and 35 – 37 under 35 U.S.C. § 102(b) as being anticipated by SCHLIMME et al. (U.S. Patent No. 3,849,255) [hereinafter “SCHLIMME”]. The Examiner asserts that SCHLIMME shows all of the recited features of the claims. Applicant traverses the Examiner’s assertions.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See The Manual of Patent Examining Procedure [hereinafter “MPEP ”] § 2131. Applicants submit that the applied art does not show each and every element of the claimed invention.

By the present amendment, Applicant’s independent claim 18 recites, *inter alia*, air flow paths associated with each story comprising *supply channels*, *displacement elements*, and *discharge channels*, so that an air flow path for a respective story comprises air flow through a respective supply channel, through respective displacement elements and a respective supporting

floor and its associated grain, and through a respective discharge path, and *at least one central opening* within the respective story, through which *at least the respective supply channel and the respective discharge channel for the respective story flows are arranged*. Further, Applicant's independent claim 37 recites, *inter alia, guiding air through at least one flow path associated with the at least one of the plurality of stories, the flow path extending through a supply channel, through displacement elements, through the respective supporting floor and its associated grain, and through a discharge path, and guiding the air in the supply channel and in the discharge channel through at least one central opening arranged within the one of the plurality of stories.*

Applicant submits that SCHLIMME fails to show at least the above-noted features of embodiments of the invention.

Applicant notes that SCHLIMME discloses a germinating and drying device for malt that includes a vertical stack of working chambers. The working chambers include a rack 13 for the malt that divides the chambers into an upper chamber 12 and a lower chamber 11. Further, each chamber is connected via closable ducts 18 to a central cylindrical stack 7 having a blower 14 at the bottom, and the blower air is deflected into a desired working chamber by positioning a movable floor 16 adjacent the ducts of the desired working chamber and opening the ducts.

However, Applicant notes that the device of SCHLIMME fails to establish or provide flow paths corresponding to those recited in at least independent claims 18 and 37. In particular, Fig. 4 of SCHLIMME discloses the various flow paths established for germination and drying. As described, only the drying operation utilizes the central cylinder stack 7. As illustrated, warm air from blower 14 is conveyed upward along path a through central cylinder stack 7 until it is deflected by movable floor 16 through ducts 18 to flow along path b through rack 13. After passing through rack 13, portions of the air are conveyed through or along one of the illustrated

paths c, d, f, g, h, i, j, k, l, and/or x. Thus, while SCHLIMME shows air discharged through channels 2, 4, or 5, there is no disclosure of air being discharged through central cylinder stack 7.

As SCHLIMME only conveys supply air through central cylinder stack 7 and discharges air through chambers located radially outside of the working chambers, Applicant submits that SCHLIMME fails to disclose *at least one central opening* within the respective story, through which *at least the respective supply channel and the respective discharge channel for the respective story flows are arranged*, as recited in at least independent claim 18. Likewise, Applicant submits that SCHLIMME fails to disclose *guiding the air in the supply channel and in the discharge channel through at least one central opening arranged within the one of the plurality of stories*, as recited in at least independent claim 37.

Because the applied art fails to show at least the above-noted features, Applicant submits SCHLIMME fails to show each and every recited element of at least independent claims 18 and 37. Thus, Applicants submit that the Examiner has failed to establish an adequate evidentiary basis to support an anticipation rejection under 35 U.S.C. § 102(b), such that this rejection should be withdrawn.

Further, Applicant submits that claims 19, 20, 32, 35, and 35 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that SCHLIMME fails to anticipate the embodiments of the invention recited in claims 19, 20, 32, 35, and 36.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 18 – 20, 32, and 35 – 37 under 35 U.S.C. § 102(b) and indicate that these claims are allowable.

*Traversal of Rejection Under 35 U.S.C. § 103(a)*I. Over Schlimme

Applicant traverses the Examiner's rejection of claims 21 – 31 under 35 U.S.C. § 103(a) as being unpatentable over SCHLIMME. The Examiner asserts it would have been obvious to modify SCHLIMME to place the vertical abutting stacks in the central floor opening. Applicant traverses the Examiner's assertions.

Applicant notes the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, Applicant is under no obligation to submit evidence of nonobviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP §2142.

While rejecting a rigid application of the teaching, suggestion, or motivation ("TSM") test in an obviousness inquiry, the [Supreme] Court acknowledged the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination.

Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd., 492 F.3d 1350, 1356-1357 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1731 (2007)).

As discussed above, Applicant notes that SCHLIMME fails to provide any express or implied disclosure of a discharge path extending through central cylinder stack 7. Applicant submits, without any disclosure of a discharge path extending through central cylinder stack 7, the applied art cannot even arguably suggest positioning the supply and discharge paths to abut each other in the central cylinder stack, as asserted by the Examiner.

More particularly, Applicant notes that SCHLIMME expressly discloses supply air being conveyed through central cylinder stack 7 and discharge air is conveyed through channels located outside of the working chambers. Thus, Applicant submits the applied art of record fails to provide any articulated reasoning for modifying SCHLIMME to include *at least one central opening* within the respective story, through which *at least the respective supply channel and the respective discharge channel for the respective story flows are arranged*, as recited in at least independent claim 18.

Accordingly, Applicant submits that SCHLIMME fails to render unpatentable the combination of features recited in at least independent claim 18, such that the rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Further, Applicant submits that claims 21 – 31 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper modification of SCHLIMME can render unpatentable the combination of features recited in claims 21 – 31.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 21 – 31 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

2. Over Schlimme in view of Neubert

Applicant traverses the Examiner's rejection of claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over SCHLIMME in view of NEUBERT (U.S. Patent No. 3,730,846). While acknowledging that SCHLIMME fails to show a supporting floor for drying below the lowermost supporting floor, the Examiner asserts it would have been obvious to modify SCHLIMME to include such a supporting floor in view of the disclosure of NEUBERT. Applicant traverses the Examiner's assertions.

Applicant notes that NEUBERT fails to disclose or even suggest the subject matter noted above as deficient in SCHLIMME. In particular, Applicant notes that, as NEUBERT fails to even arguably show a central opening within each story, this document cannot even arguably suggest any manner for modifying the central cylinder stack of SCHLIMME under 35 U.S.C. § 103(a). Thus, Applicant notes that no proper combination of SCHLIMME in view of NEUBERT can render obvious under 35 U.S.C. § 103(a) the embodiments of the invention recited in at least independent claim 18.

Further, Applicant submits that claims 33 and 34 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper combination of SCHLIMME in view of NEUBERT can render unpatentable the combination of features recited in claims 33 and 34.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 33 and 34 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

Newly Submitted Claim is Allowable

Applicant submits that for at least the foregoing reasons, newly presented claim 38 is allowable over the applied art of record. Accordingly, consideration and allowance of new claim 38 is respectfully requested.

Applicant's new claim 38, which is directed to a device for malting grains, recites, *inter alia*, a tower with a plurality of stories delineated by story floors, air-permeable supporting floors associated with each story being structured and arranged to support grain to be germinated, at least one supply channel, at least one discharge channel, displacement elements arranged between the at least one supply channel and the at least one discharge channel, an air flow generator structured and arranged to generate an air flow path through the at least one supply channel, through the displacement elements, through at least one of the air-permeable supporting floors and the grain supported thereon, and through the at least one discharge channel, and at least one central opening within at least one story, through which the at least one supply channel and the at least one discharge channel extend.

As the applied art, whether considered individually or in any proper combination under 35 U.S.C. § 103(a) fails to render obvious the embodiment of the invention recited in new claim 38, Applicant requests that the Examiner indicate the allowance of this claim in the next official communication.

Application is Allowable

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

Authorization to Charge Deposit Account

The undersigned authorizes the charging of any necessary fees, including any extensions of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

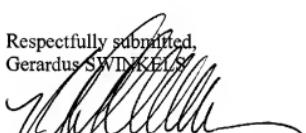
CONCLUSION

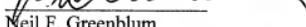
In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 18 – 38. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
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